THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 17304 OF 2005

DATED: 09-08-2005

Between

M/s. Rolls-Royce Industrial Power (India) Limited,

II Floor, Admin. Building, Beach Road, Uppada Post,

Kakinada represented by its Senior Manager –

Commercial Sri V.V.K. Sastry.

…… PETITIONER

And

1. Commercial Tax Officer, Tuni and others.

…… RESPONDENTS

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WRIT PETITION NO. 17304 OF 2005

ORDER: (per Sri B. Sudershan Reddy, J)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of Mandamus granting stay of collection of disputed tax of Rs. 9,19,418/- for the assessment year 2000-2001 payable in pursuance of the rejection order of the 3rd respondent dated 15-07-2005 made in LV(3)/606/2005 arising out of the revision order of the 2nd respondent dated 19-03-2005.

The writ petitioner is the dealer in execution of the works contracts. It is the assessee on the rolls of the Commercial Tax Officer, Tuni. The assessing authority passed assessment orders for the year 2000-2001 on gross and net turnovers of Rs.24,17,12,641/- and Rs.24,57,614/- respectively and accordingly, levied the tax vide proceedings dated 16-03-2002.

The Deputy Commissioner of Commercial Taxes on further scrutiny of the assessment records and books of accounts noticed that the dealer excluded operation maintenance contract work to the power plant owned by M/s. Spectrum Power Generation Limited and during the course of execution of the contract, the petitioner purchased and utilized the spare parts of
Rs. 1,95,22,079/- and received the payments from the contractors in terms of the contract agreement. The authority came to the conclusion that the goods supplied and used in execution of works contract is deemed sale liable to tax under Section 5F of the Andhra Pradesh General Sales Tax Act, 1957.

Having taken all the relevant facts and circumstances into consideration, the revisional authority proposed to revise the assessment of the dealer for the year 2000-2001 levying tax on the turnover of Rs.1,24,97,822/- at the rate specified under the said Act, in addition to the turnovers already assessed by the assessing authority.

It was mainly contended by the petitioner before the revisional authority, as is evident from the objections, that so far as the tools and tackles are concerned, they were the items of goods owned by them, that they were used by their own personnel for carrying out various mentioning jobs and that after completion of required maintenance of job those tools were taken back to their custody and possession. It was also contended that there was no transfer of property in those goods and therefore, they are not liable to be taxed. The revisional authority having adverted to this contention expressed its view that the dealer has not furnished any evidence about the particulars of the material that was still lying with it as property in assets at the end of the financial year. There is a clear and specific finding to that effect recorded by the revisional authority. It is under those circumstances the revisional authority came to the conclusion that those tools and tackles shall be deemed as goods relating to spares/parts only and are transferred as property in goods in execution of the works contract. Similar view is taken with regard to the filters and other items. Suffice it to note that the revisional authority noted that there is an element of transfer involved since the dealer failed to substantiate that the very same

properties were taken back into their possession and custody.

Be that as it may, the petitioner preferred an appeal before the Sales Tax Appellate Tribunal which is seized of the matter. In the circumstances, we are not inclined to express any opinion whatsoever on any of the contentions strenuously urged before us by the learned counsel for the petitioner.

The gravamen of the complaint in the instant writ petition is that the Additional Commissioner (CT) (Legal) without adverting to any of the contentions raised by the petitioner herein passed mechanical orders rejecting the stay application filed by the petitioner. There is some merit in the contention urged by the petitioner that the authority concerned is found to be disposing of the stay applications in a routine manner but that itself is not a ground for our interference and grant stay for collection of the tax. We have independently examined the matter in order to satisfy ourselves as to whether any clear case is made out for granting stay as prayed for by the petitioner. It is in that context we have noticed the specific finding by the revisional authority that there is element of sale involved so far as the goods in respect of which revised assessment order has been passed. At this stage, we find no reason to doubt the finding recorded by the revisional authority. It is not as if the revisional authority ignored the contention of the petitioner and rejected the same in a summary way.

For the aforesaid reasons, we find no reason to grant any stay as prayed for. The Writ Petition shall accordingly stand dismissed without any order as to costs. The Sales Tax Appellate Tribunal may expeditiously dispose of the appeal.

(B. Sudershan Reddy, J)

09..08..2005

(Ramesh Ranganathan, J)

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